

Nuclear Regulatory Commission

§ 2.1205

original and two conforming copies. Documents filed by telegram are governed by § 2.708(f). A document that fails to conform to these requirements may be refused acceptance for filing and may be returned with an indication of the reason for nonacceptance. Any document tendered but not accepted for filing may not be entered in the docket.

(d) Computation of time and extension and reduction of time limits is done in accordance with §§ 2.710–2.711.

(e) A request for a hearing or a petition for leave to intervene must be served in accordance with § 2.712 and § 2.1205 (f) and (k). All other documents issued by the presiding officer or the Commission or offered for filing are served in accordance with § 2.712.

[54 FR 8276, Feb. 28, 1989, as amended at 61 FR 39297, July 29, 1996; 62 FR 27495, May 20, 1997; 64 FR 29214, June 1, 1999]

§ 2.1205 Request for a hearing; petition for leave to intervene.

(a) Any person whose interest may be affected by a proceeding for the grant, renewal, or licensee-initiated amendment of a license subject to this subpart may file a request for a hearing.

(b) An applicant for a license, a license amendment, or a license renewal who is issued a notice of proposed denial or a notice of denial and who desires a hearing shall file the request for the hearing within the time specified in § 2.103 in all cases. An applicant may include in the request for hearing a request that the presiding officer recommend to the Commission that procedures other than those authorized under this subpart be used in the proceeding, provided that the applicant identifies the special factual circumstances or issues which support the use of other procedures.

(c) For amendments of part 50 licenses under § 2.1201(a)(3), a notice of receipt of the application, with reference to the opportunity for a hearing under the procedures set forth in this subpart, must be published in the FEDERAL REGISTER at least 30 days prior to issuance of the requested amendment by the Commission.

(d) A person, other than an applicant, shall file a request for a hearing with—

(1) Thirty days of the agency's publication in the FEDERAL REGISTER of a notice referring or relating to an application or the licensing action requested by an application, which must include a reference to the opportunity for a hearing under the procedures set forth in this subpart. With respect to an amendment described in § 2.1201(a)(3), other than the one to terminate the license, the Commission, prior to issuance of the requested amendment, will follow the procedures in § 50.91 and § 50.92(c) to the extent necessary to make a determination on whether the amendment involves a significant hazards consideration. If the Commission finds there are significant hazards considerations involved in the requested amendment, the amendment will not be issued until any hearings under this paragraph are completed.

(2) If a FEDERAL REGISTER notice is not published in accordance with paragraph (d)(1), the earliest of—

(i) Thirty days after the requester receives actual notice of a pending application, or

(ii) Thirty days after the requester receives actual notice of an agency action granting an application in whole or in part, or

(iii) One hundred and eighty days after agency action granting an application in whole or in part.

(e) The request for a hearing filed by a person other than an applicant must describe in detail—

(1) The interest of the requestor in the proceeding;

(2) How the interests may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in paragraph (h) of this section;

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with paragraph (d) of this section.

(f) Each request for a hearing must be served, by delivering it personally or by mail to—

(1) The applicant (unless the requestor is the applicant); and

§ 2.1205

10 CFR Ch. I (1–1–04 Edition)

(2) The NRC Staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(g) Within ten (10) days of service of a request for a hearing filed under paragraph (d) of this section, the applicant may file an answer. The NRC staff, if it chooses or if it is ordered to participate as a party under § 2.1213, may file an answer to a request for a hearing within ten (10) days of the designation of the presiding officer.

(h) In ruling on a request for a hearing filed under paragraph (d) of this section, the presiding officer shall determine that the specified areas of concern are germane to the subject matter of the proceeding and that the petition is timely. The presiding officer also shall determine that the requestor meets the judicial standards for standing and shall consider, among other factors—

(1) The nature of the requestor's right under the Act to be made a party to the proceeding;

(2) The nature and extent of the requestor's property, financial, or other interest in the proceeding; and

(3) The possible effect of any order that may be entered in the proceeding upon the requestor's interest.

(i) If a hearing request filed under paragraph (b) of this section is granted, the applicant and the NRC staff shall be parties to the proceeding. If a hearing request filed under paragraph (c) or (d) of this section is granted, the requestor shall be a party to the proceeding along with the applicant and the NRC staff, if the NRC staff chooses or is ordered to participate as a party in accordance with § 2.1213.

(j) If a request for hearing is granted and a notice of the kind described in paragraph (d)(1) previously has not been published in the FEDERAL REGISTER, a notice of hearing must be published in the FEDERAL REGISTER stating—

(1) The time, place, and nature of the hearing;

(2) The authority under which the hearing is to be held;

(3) The matters of fact and law to be considered;

(4) The time within which any other person whose interest may be affected by the proceeding may petition for leave to intervene, as specified in paragraph (j) of this section; and

(5) The time within which a request to participate under § 2.1211(b) must be filed.

(k) Any petition for leave to intervene must be filed within 30 days of the date of publication of the notice of hearing. The petition must set forth the information required under paragraph (e) of this section.

(1) A petition for leave to intervene must be served upon the applicant. The petition also must be served upon the NRC staff—

(i) By delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(ii) By mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) Within ten (10) days of service of a petition for leave to intervene, the applicant and the NRC staff, if the staff chooses or is ordered to participate as a party in accordance with § 2.1213, may file an answer.

(3) Thereafter, the petition for leave to intervene must be ruled upon by the presiding officer, taking into account the matters set forth in paragraph (h) of this section.

(4) If the petition is granted, the petitioner becomes a party to the proceeding.

(l)(1) A request for a hearing or a petition for leave to intervene found by the presiding officer to be untimely under paragraph (d) or (k) of this section will be entertained only upon determination by the Commission or the presiding officer that the requestor or petitioner has established that—

(i) The delay in filing the request for a hearing or the petition for leave to intervene was excusable; and

(ii) The grant of the request for a hearing or the petition for leave to intervene will not result in undue prejudice or undue injury to any other participant in the proceeding, including the applicant and the NRC staff, if the

Nuclear Regulatory Commission

§ 2.1209

staff chooses or is ordered to participate as a party in accordance with § 2.1213.

(2) If the request for a hearing on the petition for leave to intervene is found to be untimely and the requestor or petitioner fails to establish that it otherwise should be entertained on the paragraph (l)(1) of this section, the request or petition will be treated as a petition under § 2.206 and referred for appropriate disposition.

(m) The filing or granting of a request for a hearing or petition for leave to intervene need not delay NRC staff action regarding an application for a licensing action covered by this subpart.

(n) An order granting a request for a hearing or a petition for leave to intervene may condition or limit participation in the interest of avoiding repetitive factual presentations and argument.

(o) If the presiding officer denies a request for a hearing or a petition for leave to intervene in its entirety, the action is appealable within ten (10) days of service of the order on the question whether the request for a hearing or the petition for leave to intervene should have been granted in whole or in part. If a request for a hearing or a petition for leave to intervene is granted, parties other than the requestor or petitioner may appeal that action within ten (10) days of service of the order on the question whether the request for a hearing or the petition for leave to intervene should have been denied in its entirety. An appeal may be taken by filing and serving upon all parties a statement that succinctly sets out, with supporting argument, the errors alleged. The appeal may be supported or opposed by any party by filing a counter-statement within fifteen (15) days of the service of the appeal brief.

[54 FR 8276, Feb. 28, 1989, as amended at 55 FR 36806, Sept. 7, 1990; 59 FR 29189, June 6, 1994; 61 FR 39297, July 29, 1996; 63 FR 66730, Dec. 3, 1998; 64 FR 29214, June 1, 1999]

§ 2.1207 Designation of presiding officer.

(a) Unless otherwise ordered by the Commission or as provided in paragraph (b) of this section, within ten (10)

days of receiving from the Office of the Secretary a request for a hearing relating to a licensing proceeding covered by this subpart, the Chairman of the Atomic Safety and Licensing Board Panel shall issue an order designating a single member of the panel to rule on the request for a hearing and, if necessary, to serve as the presiding officer to conduct the hearing.

(b) For any request for hearing relating to an application under 10 CFR part 70 to receive and store unirradiated fuel at the site of a production or utilization facility that also is the subject of a proceeding under subpart G of this part for the issuance of an operating license, within ten (10) days of receiving from the Office of the Secretary a request for a hearing the Chairman of the Atomic Safety and Licensing Board Panel shall issue an order designating a Licensing Board conducting the operating license proceeding to rule on the request for a hearing and, if necessary, to conduct the hearing in accordance with this subpart. Upon certification to the Commission by the Licensing Board designated to conduct the hearing that the matters presented for adjudication by the parties with respect to the part 70 application are substantially the same as those being heard in the pending proceeding under 10 CFR part 50, the Licensing Board may conduct the hearing in accordance with the procedures in subpart G.

§ 2.1209 Power of presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order. The presiding officer has all powers necessary to those ends, including the power to—

(a) Regulate the course of the hearing and the conduct of the participants;

(b) Dispose of procedural requests or similar matters;

(c) Hold conferences before or during the hearing for settlement, simplification of the issues, or any other proper purpose;

(d) Certify questions to the Commission for determination, either in the presiding officer's discretion or on direction of the Commission;